

Federal Acquisition Regulation

49.606

to the Contractor for terminated items have been considered in arriving at the above amounts.

[If prior letters recommending release of excess funds are cited, use the following as paragraph 2:]

“The estimated settlement costs previously reported by reference (b) in the amount of \$ _____ are revised. On the best evidence now available, it is estimated that the settlement costs will be \$ _____. The additional amount available for release is \$ _____.”]

3. The related appropriations and amounts involved are:

Appropriations	Allocated Amounts
.....
.....

Copies to:

Paying Office

Accounting and Finance Office

Other

49.605 Request to settle subcontractor settlement proposals.

Contractors requesting authority to settle subcontractor settlement proposals shall furnish applicable information from the list below and any additional information required by the contracting officer:

(a) Name of contractor and address of principal office.

(b) Name and location of divisions of the applicant's plant for which authorization is requested.

(c) An explanation of the necessity and justification for the authorization requested.

(d) A full description of the applicant's organization for handling terminations, including the names of the officials in charge of processing and settling proposals.

(e) The number and dollar amount (estimated if necessary) of uncompleted contracts with Government agencies and the percentage applicable to each agency.

(f) The number and dollar amount (estimated if necessary) of uncompleted subcontracts under Government contracts and the percentage applicable to each agency.

(g) The extent of the applicant's experience in termination matters, including the handling of proposals of subcontractors.

(h) The approximate amount and general nature of terminations of the applicant currently in process.

(i) A statement that no other application has been made for any division of the applicant's plant covered by the application or, if one has been made, a full statement of the facts.

(j) The limit of authorization requested.

49.606 Granting subcontract settlement authorization.

Contracting officers shall use the following format when granting subcontract settlement authorization:

LETTER OF AUTHORIZATION

(a) Your request of _____ (date) is approved, and you are authorized, subject to the limitations of subsection 49.108-4 and those stated below, to settle, without further approval of the Government, all subcontracts and purchase orders terminated by you as a result of a Government contract being terminated or modified (1) for the convenience of the Government or (2) under any other circumstances that may require the Government to bear the cost of their settlement.

(b) This authorization does not extend to the disposition of Government-furnished material or articles completed but undelivered under the subcontract or purchase order, as these require screening and approval of disposal actions by the Government, except that allocable completed articles may be disposed of without Government approval or screening if the total amount (at subcontract price) when added to the amount of settlement (as computed below) does not exceed \$ _____ [insert limit of authorization being granted].

(c) This authorization is subject to the following conditions and requirements:

(1) The amount of the subcontract termination settlement does not exceed \$ _____ [insert limit of authorization being granted], computed as follows:

(i) Do not deduct advance or partial payments or credits for retention or other disposal of termination inventory allocated to the settlement proposal.

(ii) Deduct amounts payable for completed articles or work at the contract price or for the settlement of termination proposals of subcontractors (except those settlements that have not been approved by the Government).

(2) Any termination inventory involved has been disposed of under subsection 49.108-4, except that screening and Government approval of scrap and salvage determinations are not required.

(3) The Contracting Officer may incorporate into each Notice of Termination specific instructions about the disposition of specific items of termination inventory, or the Contracting Officer may, at any time before final settlement, issue specific instructions. These instructions will not affect any disposal action taken by you or your subcontractors before their receipt.

(4) The settlements made by you with your subcontractors and suppliers under this authorization, including sales, retention, or other dispositions of property involved in making these settlements, are reimbursable under part 49 and the Termination clause of the contract, and do not require approval of the Contracting Officer.

(5) Any number of separate settlements of \$ _____ [insert limit of authorization granted] or less may be made with a single subcontractor. Settlement proposals that would normally be included in a single proposal; e.g., those based on a series of separate orders for the same item under one contract, should be consolidated whenever possible and shall not be divided to bring them within the authorization.

(6) This authorization does not apply if a subcontractor or supplier is affiliated with you. For this purpose, you should consider a contractor to be affiliated with you if you are under common control or if there is any common interest between you by reason of stock ownership, or otherwise, that is sufficient to create a reasonable doubt that the bargaining between you is completely at arm's length.

(7) A representative of this office will, from time to time, review the methods used in negotiating settlements with your subcontractors and will make a selective examination of the settlements made by you. If the review indicates that you are not adequately protecting the Government's interest, this delegation will be revoked.

(End of letter)

49.607 Delinquency notices.

The formats of the delinquency notices in this section may be used to satisfy the requirements of 49.402-3. All notices will be sent with proof of delivery requested. (See subpart 42.13 for stop-work orders.)

(a) *Cure notice.* If a contract is to be terminated for default before the delivery date, a *Cure Notice* is required by the Default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of *cure* remains in the contract delivery schedule or any extension to it. If the time remaining in

the contract delivery schedule is not sufficient to permit a realistic *cure* period of 10 days or more, the *Cure Notice* should not be issued. The *Cure Notice* may be in the following format:

CURE NOTICE

You are notified that the Government considers your _____ [specify the contractor's failure or failures] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice [or insert any longer time that the Contracting Officer may consider reasonably necessary], the Government may terminate for default under the terms and conditions of the _____ [insert clause title] clause of this contract.

(End of notice)

(b) *Show cause notice.* If the time remaining in the contract delivery schedule is not sufficient to permit a realistic *cure* period of 10 days or more, the following *Show Cause Notice* may be used. It should be sent immediately upon expiration of the delivery period.

SHOW CAUSE NOTICE

Since you have failed to _____ [insert "perform Contract No. _____ within the time required by its terms", or "cure the conditions endangering performance under Contract No. _____ as described to you in the Government's letter of _____ (date)"], the Government is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to _____ [insert the name and complete address of the contracting officer], within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.